IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8681 OF 2004

Union of India through
General Manager, Central Rly;
Mumbai CST and another Petitioners

versus

Pitamber Chabilal Tiwari Respondent

T.J.Pandian, adv. for Petitioners.

R.J.Walia, adv. for Respondent.

CORAM : A.P.SHAH AND
S.C.DHARMADHIKARI, JJ.

DATE : 29th November 2004

PC :

1. This is a petition under Articles 226 and 227 of Constitution of India. The petitioners Union of India through General Manager, Central Railway, Mumbai CST and another impugn the judgement and order of Central Administrative Tribunal, Mumbai (hereinafter referred to as "CAT" for short) dated 6th March 2003 and 14th September 2004.

2. Respondent filed Original Application No.882 of 2002 challenging the action of petitioners

terminating his services. It was his case that during posting as Bungalow Peon at the residence of Chief Medical Superintendent, Byculla Railway Hospital, Byculla, Mumbai, he was granted leave from 17th July 2001 to 19th July 2001. According to him, he was also permitted to leave the head quarters. He fell ill after reaching Bhopal and, therefore, could not return back on the date of expiry of leave. According to him, he dispatched medical certificate and after recovery he reported for work. However, he was informed about his order of removal.

3. It appears that the grievance of respondent was that as a Bungalow Peon, his services could not have been dispensed with merely because an officer to whom he was attached, did not like him. It is his grievance that the services could not have been terminated without taking recourse to the provisions of Central Civil Services Rules. Therefore, the order of termination is illegal and deserves to be set aside.

4. Before CAT, the matter was placed before an Administrative Member. The Administrative Member heard the matter and delivered a judgement on 6th March 2003. The Administrative Member has noted that the only contention on behalf of petitioners

was that respondent herein was unauthorizedly absent from duty.

5. The Administrative Member considered the submissions and observed that services could not have been dispensed with without setting in motion disciplinary proceedings. In other words, unless opportunity was given to the respondent to explain his absence, the petitioners could not have concluded that the same was unauthorized and impose any penalty muchless termination from services. On this reasoning the Original Application was allowed.

6. It appears that a Review Petition was filed being Review Petition No.17 of 2003 by the petitioners herein. Initially this review petition was heard in the absence of respondent and an order allowing the same was set aside by this Court. After setting aside the said order, this Court directed restoration of review petition and it’s rehearing by CAT, Mumbai.

7. Upon rehearing the review petition, the CAT noted that the contentions raised in the review petition were never urged before the Administrative Member. In other words, it was never the case of the petitioners that the

Original Application could not have been heard by a Single Member Bench of CAT.. The Administrative Member who has heard review petition, has noted this aspect and in para 4 of the order delivered on the review petition, has observed that the issue of jurisdiction cannot be raised after the Original Application was heard on merits by a Single Member Bench. In the facts and circumstances of this case, when petitioners proceeded on the merits of matter, the CAT observed that the issue of jurisdiction cannot be raised in review jurisdiction for the first time.

8. The review petition was rejected as the order sought to be reviewed does not suffer from any apparent error. It was observed that the earlier order cannot be reviewed on the ground that all contentions were not considered. More so, when there is nothing to indicate that they have been canvassed earlier.

9. We have heard Mr.Pandian, counsel appearing for petitioners, and Mr.Walia, counsel for respondent.

10. In our view, the contentions raised in this petition including the issue of jurisdiction were never raised before CAT.. We cannot now permit

the petitioners to urge that the engagement of respondent as a Bungalow Peon is as per the terms and conditions contained in Railway Circulars dated 11th June 1996 and 4th February 1998. We cannot permit the petitioners to urge that in terms of these Circulars services of Bungalow Peons are temporary and can be regularised on completion of three years' continuous service and suitability at the screening. We cannot permit Mr.Pandian to urge that respondent having not completed requisite years of service, has no right to the post and therefore, his termination cannot be faulted. He being not a temporary employee was liable to be terminated without following the procedure stipulated in service rules, is also the submission.

11. In our view, applicability of the aforesaid circulars and the issue of jurisdiction was not raised before the Single Member when he delivered the order dated 6th March 2003. The matter proceeded on merits there. There is no error apparent or perversity in the order of Administrative Member of CAT and his conclusion that services of respondent could not have been dispensed with without enquiry, is in the facts and circumstances, unassailable.

12. Having urged that respondent was unauthorizedly absent, and, therefore, his services were terminated, the conclusion is inescapable that such a course is permissible only after initiation of disciplinary proceedings.

13. In the light of the aforesaid, there is no substance in this writ petition and it is accordingly dismissed. However, we clarify that the order of CAT shall be confined to the facts and circumstances of this case and shall not be treated as a precedent in future cases.

14. At the request of Mr.Pandian, we grant eight weeks time to the petitioners to comply with the order of CAT.. Writ Petition dismissed.

(A.P.SHAH, J.)

(S.C.DHARMADHIKARI, J.)

mst